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No. 80-60

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

ELVINA M. HERWEG, by her husband and next friend, Darrell E. Herweg; and DARRELL E. HERWEG, on behalf of themselves and all others similarly situated,

Petitioners,

vs.

ROBERT D. RAY, individually and in his capacity as Governor of the State of Iowa; and KEVIN J. BURNS, individually and in his capacity as Commissioner of the Iowa Department of Social Services,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Whether the court of appeals correctly invalidated a federal regulation which was promulgated by the Secretary of the Department of Health and Human Services pursuant to explicit statutory authority to define the income "available" to applicants for Medicaid and which was designed to effect the relationship between the Medicaid and Supplemental Security Income statutes.

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On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The court of appeals, sitting en banc, filed two opinions. That of Judge Ross (Pet.App. 3a-31a) is reported at 619 F.2d 1267. Judge McMillian's (Pet.App. 31a-75a) is reported at 619 F.2d 1276. The district court's Memorandum Opinion and Order of January 19, 1978 (Pet.App. 76a-88a) appears at 443 F.Supp. 1315; its Ruling and Order of July 10, 1978 (89a-96a) is reported at 481 F.Supp. 914. The Final Judgment of August 4, 1978 (Pet.App. 97a-98a) is not reported.

JURISDICTION

The judgment of the court of appeals (J.S. 83-84) was entered on March 18, 1980. On April 22, 1980, a timely petition for rehearing was denied (Pet.App. 99a-100a). The petition for certiorari was filed on July 14, 1980 and was

granted on July 2, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTES AND REGULATIONS

The relevant statutes, sections 1902(a)(10), 1902(a)(17), and 1902(f) of the Social Security Act, and the regulation at issue, 42 C.F.R. §435.723, are reprinted verbatim at Pet.App. 101a-107a.

STATEMENT OF THE CASE

1. The Medical Assistance program, commonly known as Medicaid, was established in 1965 as Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq. It provides "federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." Harris v. McRae, 448 U.S. 297,

301, 100 S.Ct. 2671, 2680 (1980); Schweiker v. Gray Panthers, 453 U.S. --, 101 S.Ct. 2633, 2636 (1981). The program is jointly financed by the federal and state governments, and administered by the states. Herweg v. Ray, 619 F.2d 1265, 1277 (8th Cir. 1980) (McMillian, J., concurring in part and dissenting in part) (Pet.App. 34a).[1/] In Iowa's case, the reimbursement formula results in payment to the state of over 55% of its incurred costs. 42 U.S.C. §1396b; 44 Fed. Reg. 10553 (1979); 45 Fed.Reg. 79582 (1980).

If a state chooses to participate in the voluntary program, it must submit a

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1/ For the sake of convenience, petitioners will hereinafter refer to Judge Ross' decision, which resulted in affirmance of the district court, as the "Ross Op.," while that written by Judge McMillian will be termed the "McM. Op."

state plan to the Secretary of Health and Human Services ("HHS") for approval. 42 U.S.C. §1396a. "State Medicaid plans must comply with requirements imposed by the [Social Security] Act itself and by the Secretary of Health and Human Services ...." Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2636; Harris v. McRae, supra, 448 U.S., at 301, 100 S.Ct., at 2680; see also 42 U.S.C. §§1396a(b), 1396b.

A key element of the federal Medicaid scheme is the flexibility which it permits the states. Although a state must develop its plan within the guidelines established by federal statute and regulations, it has numerous options available to it in devising the precise contours. States are required to provide assistance to the "categorically needy", who are those

meeting the categorical definitions of age, blindness, disability or childhood dependency, and who are considered eligible for assistance from the Aid to Families with Dependent Children program, 42 U.S.C. §601 et seq., or from the Supplemental Security Income ("SSI") program, 42 U.S.C. §1381 et seq., for the aged, blind, and disabled. Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2636; Harris v. McRae, supra, 448 U.S., at 301 n.1, 100 S.Ct., at 2680 n.1; see 42 U.S.C. §1396a(a)(10)(A); 42 C.F.R. §435.4.

Even this basic requirement, however, is replete with options and refinements. States were given the alternative of providing categorically needy coverage only to those aged, blind, and disabled who would have been eligible under the state's

plan in effect on January 1, 1972. 42 U.S.C. §1396a(f); Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2637-2638. Selection of this so-called "§209(b) option" releases a state from the obligation of automatically covering all SSI recipients, and thus allows it to tailor its program to its particular fiscal needs. Id., at 2637.

In addition, Congress has established the optional categorically needy. 42 U.S.C. §1396a(a)(10)(III); 42 C.F.R. §435.200 et seq. These are limited groups to which a state can extend categorically needy coverage; although they do not actually receive SSI cash assistance, they are either eligible for them or are considered eligible for them. See McM. Op., 619 F.2d, at 1284 (Pet. App. 52a-53a); S.Rep.No. 93-553, 93d Cong., 1st Sess. 58 (1973).

Finally, the state may extend eligibility to the medically needy, who also are within one of the four defined categories, but who, unlike the categorically needy, have income or recources too high to qualify for cash assistance. Beltran v. Myers, 101 S.Ct. 1961, 1962 n.1 (1981); Harris v. McRae, supra, 448 U.S., at 301 n.1, 100 S.Ct., at 2680 n.1; see 42 U.S.C. §1396a(a)(10)(C); 42 C.F.R. §435.4. The medically needy establish their eligibility by spending down on medical costs to established levels. 42 C.F.R. §435.301; see, e.g., Hogan v. Harris, 501 F.Supp. 1129, 1131-1132 (D.Mass.1980), on appeal, No. 81-213 (Jur. Stmt. filed July 31, 1981). States which extend assistance to the medically needy have been required to extend it to all individuals satisfying the statutory definition, 42 U.S.C. §1396a(a)(10)(C)(i), while they can selectively

extend categorically needy coverage to specifically defined groups of the optional categorically needy. McM. Op., 619 F.2d, at 1284 (Pet.App. 53a). The medically needy are further distinguished from the categorically needy because states are not required to provide the same services to the two classifications. Compare 42 U.S.C. §1396a(a)(13)(C) with 42 U.S.C. §1396a(a)(13)(B); see Harris v. McRae, supra, 448 U.S., at 301 n.1, 100 S.Ct., at 2680 n.1.[2/]

2/ On August 13, 1981, President Reagan signed into law the "Omnibus Budget Reconciliation Act of 1981," Pub.L. No. 97-35, 95 Stat. --. Section 2171 of the Act replaces the previous section 1902(a)(10)(C) of the Social Security Act, 42 U.S.C. §1396a(a)(10)(C), with a new paragraph (C). This new provision allows states to provide medically needy coverage on a more selective basis. See H.Rep. No. 97-208, 97th Cong., 1st Sess. 970-971 (1981). The Act makes only slight, irrelevant changes to section 1902(a)(10)(A), see H.Rep. No. 97-208, supra, at 479-480,

(cont. p. 10)

Iowa chose not to cover the medically needy. Moreover, it has elected to premise coverage of the aged, blind, and disabled on the SSI statute; it does not, therefore, have the flexibility of §209(b) states, which may employ eligibility conditions more restrictive than those used by the "SSI states". 42 U.S.C. §1396a(f); 42 C.F.R. §435.121. Iowa has chosen, however, to extend coverage to some optional categorically needy. Because they are categorically needy, however, the state is not required to extend coverage to any others. See McM.Op., 619 F.2d, at 1284 (Pet. App. 53a).

2. Having opted not to be a §209(b)

2/ (cont.)
and makes no changes to either the §209(b) option or the optional categorically needy. Since Iowa does not have a medically needy program, infra, at 10, this amendment is irrelevant to this case.

state, Iowa was therefore subject to the Medicaid rules applicable to the SSI states. For several years after SSI was implemented on January 1, 1974, the relationship between SSI and Medicaid was not fleshed out by HHS. It is apparent that some SSI states continued to use eligibility conditions which were more restrictive than permitted under SSI.[3/] Additionally, because some SSI states contracted with the Social Security Administration for the latter to determine the eligibility of its categorically needy, see 42 U.S.C. §1383c; 20 C.F.R. §416.2101 et seq., situations were arising whereby an individual was

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3/ For example, both Oregon and Texas were and are SSI states, yet both were using rules for determining Medicaid eligibility after 1973 which were not premised on SSI. See Franssen v. Juras, 406 F.Supp. 1375 (D.Ore.1975); Burns v. Vowell, 424 F.Supp. 1135 (S.D.Tex.1976).

certified as categorically eligible by SSA, but was found ineligible under state rules. See 40 Fed.Reg. 60074 (1975) (1st col.).

Concerned with these and other inconsistencies, and anxious to "ensure uniformity and equity in Medicaid eligibility determinations ... in accord with the applicable statutory and regulatory provisions," id., at 60074 (2d col.), the Secretary proposed amended regulations on December 31, 1975. 40 Fed.Reg. 60074. The new regulations, designed to replace those then codified at 45 C.F.R. §248.3(b), set out "the rule for use of SSI policy in determining the availability of the income and resources of spouses and parents for aged, blind and disabled applicants in States using Title XVI eligibility criteria." Id.,

at 60074 (2d col., ¶4). Like all interested parties, Iowa and other states were offered the opportunity to comment on these proposed regulations. Id., at 60074 (3d col.).

The regulations were later published in final form, with an effective date of April 13, 1977. 42 Fed.Reg. 2684 (1977). The explanation of the regulations discussed their purpose and responded to comments which had been offered about the proposed regulations. HHS reiterated the need for "uniformity and equity in Medicaid eligibility determinations", id., at 2684 (1st col.), and again noted that the relationship between the Medicaid and SSI statutes required the use of SSI eligibility criteria.4/

4/ "Thus, relatives whose incomes are looked to and counted in determining SSI eligibility in certain living arrangements must also be looked to and have their incomes counted in Medicaid eligibility determinations by the State; conversely, where relatives' incomes are not counted, or cease
(cont. p. 14)

Significantly, HHS also noted that the "new regulations constitute such standards of availability prescribed by the Secretary" pursuant to the express directive in the Medicaid statute, 42 U.S.C. §1396a(a)(17)(B). 42 Fed.Reg. 2684 (2d col.).

The explanation of the new regulations described in detail how the limited periods for imputing income available between separated spouses were derived. Id., at 2685. They were based on provisions of the SSI statute which required the incomes of eligible spouses to be counted as one while they were living together, and for six months after they separated, while the incomes of spouses where only one was eligible were considered individually as soon

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4/ (cont.)

to be counted in certain living arrangements, Medicaid-only eligibility determinations must do likewise." 42 Fed.Reg. 2684 (2d col.).

as they separated. Id., at 2685 (1st col.). The Medicaid regulation developed for the SSI states thus specifically reflected these distinctions between the treatment of couples' income based on the spouses' eligibility and the period of separation. See 45 C.F.R. §248.3(b)(2) (1977).[5/] In effect, the regulations required the states to treat the spouses as separate economic units after expiration of the one- or six-month periods of separation. The combining, imputing, or deeming of income was forbidden at those points. See Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2638.

5/ The regulation was later renumbered as 42 C.F.R. §448.3(b). 42 Fed.Reg. 52827 (1977). A year later, HHS rewrote and recodified, but without "policy" or "substantive" changes, its Medicaid regulations. Those discussed in this case became 42 C.F.R. §435.723. 43 Fed.Reg. 45176, 45177 (1978). See Norman v. St. Clair, 610 F.2d 1228, 1235 & n.12 (5th Cir. 1980), cert. denied sub nom. Schweiker v. Norman, 101 S.Ct. 3159 (1981).

HHS considered the comments from states concerned about "the cost impact [which] the proposed regulations would have on the State Medicaid programs." 42 Fed.Reg. 2685 (2d col.).[6/] HHS specifically rejected these and other arguments on several grounds. First, the financial impact on the states was not as great, HHS noted, as on individuals subjected to deeming. Moreover, there were not many people involved, and, in any event, the regulations did not forbid the states from enforcing relative responsibility laws to collect contributions. Id., at 2685 (2d col., Response 1). HHS also repeatedly stated that the limitation on deeming was required in the SSI states by the relationship between the statutes; only those

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6/ The record does not reflect whether Iowa or its Department of Social Services filed such a comment.

selecting the §209(b) option were released from that obligation. Id., at 2686 (1st col., Responses 5, 6, 7). The agency thus explained in detail why its regulations were a necessary incident of statutory requirements, and implied that states with objections should select the alternative basis for determining the eligibility of the aged, blind and disabled.

Iowa, and at least one other state, Florida, selected a different course: they proposed to continue unlimited deeming without becoming SSI states.[7/] Iowa's action was deliberate and explicit. The Iowa General Assembly instructed the State

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7/ Florida's illegal action was enjoined shortly thereafter because of its failure to comply with controlling federal law. Griswold v. Page, [1977] Medicare & Medicaid Guide (CCH) ¶28,537 (N.D.Fla.1977). The district court in that case found the federal regulations controlling, and did not suggest or imply that those regulations might not comport with the federal statute.

Department of Social Services to "resist the implementation" of the new federal regulations. House File 464, section 18, Acts of the 67th General Assembly (J.A. 48). The Department complied by issuing its Manual Letter No. XII-1-28 (part 2) on June 3, 1977 (J.A. 36). See Herweg v. Ray, 443 F.Supp., at 1316-1317 (Pet.App. 76a).

Pursuant to this directive, a portion of the income of the non-institutionalized spouse, computed by use of an arbitrary formula which did not take into account the individual needs and expenses of that spouse, was assumed, or deemed, available to the institutionalized spouse without regard to whether the deemed amount accurately reflected the financial situation of the non-institutionalized spouse and to whether the non-institutionalized

in fact made the contribution. The Iowa policy, thus, ignored the express HHS directive that the income of one spouse could not be considered available to the other at the conclusion of the stated periods.

HHS was unsuccessful in inducing Iowa to comply. In a letter to the HHS regional commissioner in Kansas City on June 15, 1977, defendant Burns defended Iowa's position on the grounds that "[w]e have determined that the revised regulations ... are not in the best interest of the state or its citizens." The letter noted, inter alia, that the federal regulations would "serve to increase expenditures" and "further compounds the complexity of an eligibility process which is already burdensome and once again unilaterally passes costs on to the state without adequately

assessing the impact of such action upon individual programs." (J.A. 50-54) These contentions had already been considered and rejected by HHS during the comment period. Moreover, defendant Burns made no effort to defend the state's policy on legal grounds; there is no explanation as to why defendants believed that their policy complied with federal law or that the HHS regulations did not.

3. Elvina Herweg, who had been married to Darrell Herweg since July 30, 1949, suffered aneurisms and cerebral hemorrhages on both sides of her head in August, 1976. She has since remained in a comatose state, permanently and totally disabled. On her behalf, Darrell Herweg applied for medical assistance, which was granted, effective October 7, 1976. She was placed in a long term care facility on November 1, 1976,

and her husband applied for and received medical assistance for her care in that facility. (J.A. 25-27, 76.) Herweg v. Ray, 443 F.Supp., at 1316-1317 (Pet.App. 77a).[8/]

At the time of the filing of the complaint, Mr. Herweg, a butcher in Council Bluffs, Iowa, had a monthly net income of $1032.00, on which he was supporting three teenage daughters. Mrs. Herweg had no income of her own. Pursuant to the Department's initial calculations, he made monthly contributions to the cost of her care of $234.80 in April, May, and June, 1977. This payment left him with insufficient income to meet his family's expenses. (J.A. 27, 76, 79.) On June 2,

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8/ The essential facts of the Herwegs' situation, as well as defendants' policy and refusal to comply with federal regulations, were stipulated to by the parties. Unless otherwise stated, all factual statements are supported by the stipulation. (J.A. 76.)

1977, the Department issued a new Notice of Decision, based on the revised state method for calculating available income set out in the Manual Letter. (J.A. 27, 55, 76.) It set aside $197.00 per month as a "diversion" for Mr. Herweg, $266.70 for the three daughters, and $25 as a personal allowance for Mrs. Herweg; $65 as earned income was exempted. The rest of his gross income, over $800, was considered available to her; as this amount was over the eligibility standard for a nursing home resident, Mrs. Herweg was determined ineligible, effective June 30, 1977.[9/]

9/ As Judge McMillian noted, 619 F. 2d, at 1290-91 (Pet.App. 69a-74a), Mrs. Herweg's complete impoverishment made her eligible for SSI benefits. Had she applied, she would have been found eligible within a month of entering the institution. She did not apply, however, and thus was not actually receiving SSI benefits.

Later, after the court granted a Temporary Restraining Order, the Department issued a new "Proposed Decision" based on a different calculation. Under this determination, she was found eligible, but an arbitrary portion of his income was still deemed available to her. (J.A. 28, 65, 76.) If he failed to pay that amount, her "eviction would be imminent." Herweg v. Ray, 443 F.Supp., at 1317 (Pet.App. 79a).

4. After the June 2, 1977 decision of the local welfare office was affirmed by the state, this case, brought as a class action, was filed in district court. With the causes of action brought under 42 U.S.C. §1983, jurisdiction was alleged under 28 U.S.C. §1343 and 28 U.S.C. §1331.[10/]

10/ The district court found jurisdiction under both of these provisions, 443 F.Supp., at 1316 (Pet.App. 77a), and the court of appeals noted jurisdiction under §1343(3). Ross.Op., 619 F.2d, at 1269 (Pet.App. 8a-10a).

Plaintiffs filed an amended complaint on September 15, 1977, in which they elaborated on their arguments. Plaintiffs raised both statutory and constitutional claims, with their lead allegation being that the policy required by the state legislature and implemented by the Department violated the federal regulation [then 45 C.F.R. §248.3(b)]. Based on the parties' stipulation to the material facts (J.A. 76), and the affidavit of Darrell Herweg (J.A. 78), the court issued its initial decision on January 19, 1978, granting summary judgment to plaintiffs. Judge Stuart recognized that federal law places limitations on the eligibility criteria which states may impose, 443 F. Supp., at 1318 (Pet.App. 81a), and he therefore concluded that the Medicaid statute, 42 U.S.C. §1396a(a)(17), forbade

a state from deeming "a computed portion of a spouse's income to be available for an institutionalized spouse's expenses by the application of an arbitrary formula ...." Id., at 1319 (Pet.App. 83a). At the same time, the court also acknowledged that a state could seek a contribution from the non-institutionalized spouse, id., at 1319 (Pet.App. 83a-84a), but did not indicate how this contribution could be effected. The court held Manual Letter No. XII-1-28 (part 2) invalid. Id., at 1319 (Pet.App. 85a).

The district court also evaluated Iowa's policy in light of the federal regulations, and held it invalid under those regulations as well. 443 F.Supp., at 1320 (Pet.App. 86a). The court was quick to point out that it was not "approving the amended [federal] regulations," but that it was "not appropriate to make a

finding on the validity of that section [of the regulations]." Id., at 1320 (Pet. App. 87a). Despite this determination that the Iowa policy violated the federal regulations, the court simultaneously held that the state should make an individualized determination of available income, which could "be required as a contribution to the support of the institutionalized spouse." Id., at 1320 (Pet.App. 87a). Since the applicable federal regulation does not permit a state to deem any amount after the first month of institutionalization, this additional conclusion appeared to contradict the determination that the state policy was in violation of the regulations.[11/]

11/ The court declined to rule on plaintiff's constitutional claims. Those claims were not before the court of appeals, nor are they before this Court. See Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2639 n.11, 2643 n.23.

The parties requested the court to further explain its holding, and plaintiffs raised other issues as well. On July 10, 1978, the court issued an additional "Ruling and Order." 481 F.Supp. 914 (Pet.App. 89a). First, Judge Stuart held that the "anti-alienation" provisions of the Social Security, Railroad Retirement, and Civil Service Retirement Acts[12/] required that benefits from these programs be disregarded in calculating the income of the non-institutionalized spouse. 481 F.Supp., at 916 (Pet.App. 90a). Secondly, he clarified his previous holding by accepting the state's revised procedures, under which the state would still be imputing income from one spouse to the other. The court was satisfied with the

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12/ Respectively: 42 U.S.C. §407; 45 U.S.C. §231m; 5 U.S.C. §8346(a).

state's new procedure requiring individualized determinations of appropriate contributions, and concluded that it did not violate the requirements of 42 U.S.C. §1396a(a)(17). Id., at 917 (Pet. 91a-92a). Finally, the court agreed that defendants should notify the members of the plaintiff class of their right to obtain reimbursement of amounts improperly deemed from them in the past. Id., at 917-918 (Pet. App. 93a-96a).

In its final judgment dated August 4, 1978, the court incorporated its prior decisions (Pet.App. 97a-98a). From that judgment, plaintiff appealed, contending that regardless of whether and how an individualized determination was made, the state was still not permitted under federal law to assume that contributions would in fact be made. The original submission of

the appeal to a panel of the Eighth Circuit was vacated sua sponte by that court, which ordered the case to be re-argued en banc. (J.A. 82.) At the same time, the court requested the Department of Health and Human Services to submit a brief amicus curiae "specifically" directed at the validity of "the regulation at issue [42 C.F.R. §435.723(d)] ...." HHS complied with that request.

In the court of appeals' order and decision of March 18, 1980, the district court's judgment on the issue of deeming was "affirmed by an equally divided court ...." 619 F.2d, at 1267 (Pet.App. 2a).13/

13/ All eight members of the court, however, reversed the district court's decision forbidding consideration of government benefits because of "anti-alienation" provisions. 619 F.2d, at 1267, 1275, 1292 (Pet.App. 2a, 28a, 74a). Defendants had

(cont. p. 30)

Both Judges Ross and McMillian acknowledged that the issue which they were resolving was the propriety of the federal regulations. Judge Ross, for instance, noted that "there is no dispute that the new [state] procedure approved by the district court is contrary to regulation, [42 C.F.R.] §435.723." 619 F.2d, at 1269 (Pet.App. 10a-11a). Thus, both opinions were directed not at a determination of whether the state procedure failed to comply with federal law, which had been the issue presented to the district court, but, rather, with whether the federal regulation was an appropriate interpretation of the federal statute.

13/ (cont.)
not appealed that or any other aspect of the district court's judgment nor had either party or HHS discussed that issue in any briefs to the court of appeals or at either oral argument.

The court's disagreements were initially and significantly evident in their discussions of the appropriate standard by which to evaluate the regulation promulgated by HHS. Judge Ross relied on the general presumption in favor of the construction of the responsible federal agency, but with emphasis on the proviso that the court should not rubber-stamp those decisions. 619 F.2d, at 1270 (Pet. App. 13a-14a). As an apparent afterthought, he rejected the notion that the explicit delegation to the Secretary to define "available" requires the Secretary to be upheld unless that decision is arbitrary, capricious, an abuse of discretion, or otherwise illegal. 619 F.2d, at 1272 n.4 (Pet.App. 18a-19a).[14/]

14/ Judge Ross stated alternatively that "even under the narrower test of

(cont. p. 32)

By contrast, Judge McMillian recognized the applicability of the Batterton test to this case through the delegation to the Secretary in 42 U.S.C. §1396a(a)(17)(B). He therefore summarized the task before the court in this manner: "This question before us is whether the regulation is proper, not how the statutory term should be interpreted." 619 F.2d, at 1277 (Pet.App. 32a) (emphasis in original). Judge McMillian thus directed his attention not at devising the best possible interpretation of the statutory terms, but at determining whether the Secretary's interpretation was a

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14/ (cont.)

Batterton [v. Francis, 432 U.S. 416 (1977)], we would hold that the regulation must fall." 619 F.2d, at 1272 n.4 (Pet.App. 19a). But he offered no analysis in support of this conclusion, and applied all of his reasoning to an explanation of why his interpretation of the statute was preferable to the Secretary's.

legitimate one. See Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2640.[15/]

Judge Ross' substantive analysis was primarily based on an interpretation of 42 U.S.C. §1396a(a)(17). He reasoned that

> "the term 'available' in §1396a(a)(17) when read in conjunction with the legislative history cannot by any stretch of the imagination be translated into the 'actually contributed' language of the current regulation .... In effect [HHS] has substituted the words 'actually contributed' for the statutory word 'available.'" 619 F.2d, at 1271-1272 (Pet.App. 17a-18a).

As further support for his position, he relied on the language of §1396a(a)(17)(D), which allows "a state to consider the financial responsibility of a spouse in determining eligibility." Id., at 1272 (Pet.App. 18a).

15/ Judge McMillian added that the Secretary's interpretation was indeed the better one. 619 F.2d, at 1277 (Pet.App. 33a).

Although Judge Ross acknowledged the link between SSI and Medicaid, he rejected its logical and necessary impact in this situation. Finding no SSI provision requiring use of the term "actually contributed" to define "available", he determined that the provisions on which HHS relied for the regulation provided no basis for that construction. 619 F.2d, at 1273 (Pet.App. 23a-24a). Moreover, he concluded that existence of the optional categorically needy provided an additional rationale for not following the requirements of the link. Id., at 1274-1275 (Pet.App. 26a-27a). He failed to explain, however, how the link between the two statutes could possibly result in applying a different rule for determining Medicaid eligibility than for determining SSI eligibility, regardless of whether the

categorically needy are limited to actual cash recipients or include those deemed to be cash recipients. To a significant extent, Judge Ross, like the Iowa General Assembly, rested his legal conclusion on the irrelevant assumption that the federal regulation would result in an unwarranted increase in expenditure to the states. Id., at 1275 (Pet.App. 27a).

Judge McMillian, however, recognized the pivotal role of the link between the two statutes: "[T]he deeming regulation is based upon SSI eligibility criteria and is mandated by the Medicaid statute itself, which defines Medicaid eligibility by referring to SSI eligibility." Id., at 1278 (Pet.App. 37a). This generally recognized integration of the SSI rules into the Medicaid program necessarily resulted in applying limitations to some aspects of

Medicaid eligibility; thus, the recognition of spousal responsibility in §1396a (a)(17)(D) was not repudiated by the HHS regulation, as Judge Ross determined, but was, rather, limited by it. Id., at 1280 (Pet.App. 40a-42a). The overall treatment of separated spouses, Judge McMillian concluded, must be determined by both the Medicaid and SSI statutes, not just by the former, which is solely applicable only in §209(b) states. Id., at 1280, 1287 (Pet. App. 43a, 61a-62a). As a consequence, the method by which the income of a spouse is counted, or not counted, as available to the other in SSI determinations must necessarily be applied in the Medicaid context as well. The regulations implemented this goal; indeed, they were necessary to achieve this goal. Id., at 1287 (Pet.App. 61a-62a). Unlike Judge Ross, therefore,

Judge McMillian fully accepted the basic and definitive premise of an "SSI state": "Medicaid eligibility in an SSI state is premised upon SSI eligibility." Id., at 1289 (Pet.App. 65a).

In short, the court of appeals' opinions present two strikingly different views of both the appropriate standard for review and the appropriate interpretation of the statutory provisions. Judge Ross rejected the significance of the congressional directive to the Secretary to define "available". He also repudiated the premise on which Congress established the relationship between the SSI and Medicaid. Judge McMillian recognized that the court's only obligation was to determine whether the Secretary's interpretation is appropriate, and concluded that the definitive link between the two programs required

the Secretary to develop regulations for Medicaid which were derived directly from the SSI statute.

SUMMARY OF ARGUMENT

I. It is undisputed that the Iowa regulation challenged in this case conflicts with the federal regulation. If the latter is valid, then the former must fall. The issue before this court, therefore, is the validity of the federal regulation.

That regulation, 42 C.F.R. § 435.723, was promulgated by the Secretary of Health and Human Services pursuant to an explicit directive in the Medicaid statute, 42 U.S.C. § 1396a(a)(17)(B), that the Secretary define "available" income and resources. This Court has recently held that paragraph (17)(B) requires the Secretary's interpretation to be given "legislative effect". Schweiker v. Gray Panthers, 101 S.Ct. 2633,

2640 (1981). In light of the standard which flows from that extraordinary deference to the Secretary, the Court's only role is to ensure that the federal regulation is not arbitrary or capricious. Batterton v. Francis, 432 U.S. 416, 426 (1977).

II. Since the federal regulation is reasonable, it must be upheld and the state regulation must be found invalid.

A. Although this Court just considered the Secretary's interpretation of "available" in the Gray Panthers case, the substantive determination there does not control in this case. The issue there was deeming in the § 209(b) states, whereas here, the issue is "deeming" in the SSI states. The former, by definition, have considerably greater flexibility, as this Court has recognized. Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2637-2638.

The determination that unlimited deeming was permissible in those states has no applicability to the regulation here at issue.

B. The federal regulation at issue permits deeming in the SSI states, but limits it to certain periods of time. See id., at 2638. By contrast, the regulation applicable in the § 209(b) states is not tied to the SSI statute and therefore has no time limitations.

C. The Secretary has always based the deeming regulation for SSI states on the "SSI-Medicaid link", 42 U.S.C. § 1396a(a)(10)(A), which requires an SSI state to provide Medicaid to the categorically needy. This automatic dependence of Medicaid eligibility on SSI eligibility has been regularly acknowledged by the courts; as this Court observed in Gray Panthers, it was specifically because of this dependence that Congress offered states the more

flexible approach inherent in the § 209(b) option. Id., at 2637-2638.

The deeming rules in the SSI states derive from the statutorily required treatment of income in the SSI program. The Secretary has determined that the time limits from that program must, because of the "link", be read into the Medicaid program. Pursuant to his statutory directive, therefore, the Secretary defines "available" in light of the SSI requirements.

Neither the defendants nor the courts below have presented any arguments that the Secretary's regulation, which is entitled to "legislative effect", is arbitrary or capricious. One suggestion below, however, was that the regulation violates 42 U.S.C. § 1396a(a)(17)(D), which permits states to take into account the financial responsibility of spouses. But

that section is not mandatory, and, in any event, the regulation does not repudiate that provision. Deeming is permitted for limited time periods; moreover, as the Secretary has noted, the states are still allowed to enforce responsibility through other methods. The Secretary has not nullified paragraph (D), but has balanced it with other requirements of the statute.

The court below also cited the words "actually contributed" in the regulation as indicative of error on the Secretary's part. But the precise language is irrelevant, for the only important factor is whether the regulation effectuates the goal of limiting deeming to the same extent that is required in the SSI program. And that goal is accomplished through the language chosen by the Secretary.

The explicit language of paragraph (17)(B), as recently explained by this

Court, requires the Secretary's regulation to be given "legislative effect". The Secretary has balanced the various factors, and the result is consistent with the statute. Since the state rule is in conflict, it must be held invalid.

ARGUMENT

I. THE FEDERAL REGULATION, 42 C.F.R. § 435.723, IS ENTITLED TO LEGISLATIVE EFFECT.

The issue of this case is a conflict between federal regulations defining Medicaid deeming in SSI states and Iowa's own deeming rules. The district court below, as well as the court of appeals by virtue of an equally divided en banc court, approved of Iowa's "deeming" procedures even though "there is no dispute . . . [that it] is contrary to regulation [42 C.F.R.] § 435.723". Ross Op., 619 F.2d, at 1269 (Pet.App. 10a-11a). Given this inherent conflict, Iowa can succeed only if the federal regulations are determined to be void; conversely, if the federal regulations are valid, Iowa's procedures

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must be invalid.[16/]

The regulation on which this case hinges, 42 C.F.R. § 435.723, was promulgated by the Secretary under the authority of 42 U.S.C. § 1396a(a)(17)(B). Paragraph (B) sets forth in relevant part that states providing Medicaid benefits must consider an applicant's "income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant." (Emphasis supplied.)

16/ This Court has long recognized that states which participate in federal-state cooperative programs under the Social Security Act must comply with federal requirements when accepting federal dollars. E.g., Townsend v. Swank, 404 U.S. 282, 286 (1971). Thus, "[s]tate Medicaid plans must comply with requirements imposed both by the Act itself and by the Secretary of Health and Human Services . . . ." Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2636 (emphasis supplied). Iowa is therefore bound to follow federal Medicaid regulations as long as it participates in the program.

Just last Term, this Court, relying on Batterton v. Francis, 432 U.S. 416 (1977), analyzed the broad authority of the Secretary to prescribe regulations under this provision:

> "In view of this explicit delegation of substantive authority, the Secretary's definition of the term 'available' is 'entitled to more than mere deference or weight.' Batterton v. Francis, supra, 432 U.S., at 426, 97 S.Ct., at 2406. Rather, the Secretary's definition is entitled to 'legislative effect' because, '[i]n a situation of this kind, Congress entrusts to the Secretary, rather than to the courts, the primary responsibility for interpreting the statutory term.' Id., at 425, 97 S.Ct., at 2405. Although we do not abdicate review in these circumstances, our task is the limited one of ensuring that the Secretary did not 'excee[d] his statutory authority' and that the regulation is not arbitrary or capricious. Id., at 426, 97 S.Ct., at 2406." Schweiker v. Gray Panthers, supra, 101

S.Ct., at 2640.

The Batterton standard controls the focus for evaluating the conflict between Iowa's deeming procedures and the federal government's rules. Under Batterton's "legislative effect" rule, the court must weigh only the reasonableness of the Secretary's regulation. If the regulation meets that test, it is valid and the inquiry is at an end. As Judge McMillian correctly noted below: "[T]he question is whether the federal regulation itself is a reasonable interpretation of the statutory provision." 619 F.2d, at 1277 (Pet.App. 33a).17/

17/ Judge McMillian, although not having the benefit of this Court's analysis in Gray Panthers, used virtually identical reasoning to support his application of the Batterton standard in this case. Judge Ross, on the other hand, not only questioned the applicability of Batterton, but effectively ignored the standard. Judge Ross did note, after attempting to distinguish

Employing the Batterton/Gray Panthers analysis does not, contrary to Iowa's assertion below, require an in-depth analysis of the reasonableness of Iowa's deeming rules. Even were the conclusion warranted, it would not be relevant that Iowa's

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Footnote 17 continued.

Batterton, that he would strike down the HHS regulations, even under the narrow Batterton test, 619 F.2d at 1272 n. 4 (Pet.App. 19a n. 4). Nevertheless, Judge Ross' opinion belies that statement.

First, he made no findings or conclusions consistent with the Batterton analysis. Nowhere, for example, does Judge Ross conclude that HHS' regulations are either arbitrary or capricious.

Second, his minimal deference to Batterton appears at best to be an afterthought. Well before his "Batterton footnote", Judge Ross relies on pre-Batterton cases, such as Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969), which use the "deference to the agency" standard. Use of this "mere deference" approach, however, ignores this Court's directions that regulations under 42 U.S.C. § 1396a(a)(17)(B) are entitled to much greater weight -- i.e., legislative effect. Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2640.

interpretation of the federal statute is also rational or consistent with congressional intent: "Whether or not the federal regulation is less reasonable than the state's regulation is beside the point." McM. Op., 619 F.2d, at 1277 (Pet.App. 33a).

Given the weight accorded federal regulations adopted under section 1396a(a)(17)(B), it is sufficient for this court to determine that those regulations are not arbitrary. Consideration of Iowa's statutory analysis justifying its rules, as is offered by Judge Ross, is not a proper focus for this Court. Instead, the issue, as set forth by Judge McMillian and confirmed in Gray Panthers, is simply whether the Secretary's definition of the term "available" in 42 C.F.R. § 435.723 is arbitrary and capricious. Schweiker v. Gray Panthers, supra, 101 S.Ct., at

2640.[18]

II. THE FEDERAL REGULATION, 42 C.F.R. § 435.723, IS REASONABLE AND NOT ARBITRARY OR CAPRICIOUS.

A. The Substantive Determination In Gray Panthers Is Relevant But Not Controlling.

The validity of Iowa's deeming rules, as shown above, turns on the validity of the controlling HHS regulations. This Court's decision last Term in Gray Panthers is determinative of the standard to be applied in evaluating regulations promulgated pursuant to 42 U.S.C. § 1396a(a)(17)(B). However, the specific regulations

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18/ As this Court also noted in Gray Panthers, 101 S.Ct., at 2640, another issue under Batterton is whether the Secretary has "exceeded his statutory authority." In this case, however, "neither party argues that the Secretary has exceeded her authority in promulgating this regulation". McM. Op., 619 F.2d, at 1278 (Pet.App. 37a).

before the Court in this matter, 42 C.F.R. § 435.723, were not at issue in Gray Panthers.

The Gray Panthers case concerned only the validity of HHS deeming regulations applicable to § 209(b) states. See 42 U.S.C. § 1396a(f). As previously noted, states participating in the Medicaid program have an option of using their 1972 eligibility rules (§ 209(b) states) or the SSI rules (SSI states). "States thus became either 'SSI states' or '§ 209(b) states' depending on the coverage that they offered." Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2638 (footnote omitted).

Furthermore, as this Court noted in Gray Panthers, the Secretary permits states to "change from 'SSI-status' to '§ 209(b)-status' at any time." Id., at 2638 n. 6. Fifteen states presently use the § 209(b)

option; therefore, they may undertake deeming to the extent permissible under their 1972 eligibility rules. The federal regulations for these states, which, by definition, ignore SSI rules, authorize "[g]reater 'deeming'" than for SSI states. "[I]f they choose, § 209(b) states may 'deem' to the full extent that they did before 1972." Id., at 2638 (citation omitted). Only the regulations applicable to the § 209(b) states, 42 C.F.R. § 435.734, were considered in Gray Panthers.

By contrast, the present case concerns the corresponding regulation authorizing deeming in the SSI states. As this Court has already noted, the extent of deeming allowed in SSI states differs from that allowed in § 209(b) states.[19/]

19/ This Court has resolved in Gray Panthers the issue of whether the statutory underpinnings of the regulations, 42 U.S.C. § 1396a(a)(17)(B) and (D), permit deeming.

Thus, the only question now before the Court is the validity, under the Batterton test, of the HHS regulations that apply to the 35 SSI states. These states are, by definition, unaffected by the situation in § 209(b) states. Gray Panthers offers guidance and instruction, but has not directly answered the ultimate issue of this case -- the validity of 42 C.F.R. § 435.723.

B. Limited Deeming Is Permissible In SSI States Under the Federal Regulations.

Under the Medicaid statute, as upheld by this Court in Gray Panthers, the Secretary has the power to interpret and

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Footnote 19 continued.

Although plaintiffs had argued below in this case that deeming was not allowed at all in SSI states, they have abandoned that contention and did not raise it as an issue in their petition for writ of certiorari.

define "available" income and resources for making Medicaid determinations. See 42 U.S.C. § 1396a(a)(17)(B). The Secretary has defined "available" in the context of spouses separated by institutionalization differently in the SSI states than in the § 209(b) states:

> "In SSI States, 'deeming' is conducted in the following manner: When the applicant and his spouse live in the same household, the spouse's income and resources always are considered in determining eligibility, 'whether or not they are actually contributed.' 42 C.F.R. § 435.723(b). When the applicant and spouse cease to share the same household, the spouse's income is disregarded the next month, id., § 435.723(d), unless both are eligible for assistance. In the latter case, the income of both is considered for 6 months after their separation. Id., § 435.723(c)." Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2638.

The basic difference between the SSI states' deeming rules and those applicable to § 209(b) states is that the SSI rules

are time limited. Deeming in SSI states is for a "certain period", and can be for a "maximum of six months". McM. Op., 619 F.2d, at 1279 (Pet.App. 38a-39a).

There is no dispute that the deeming regulation "treats the income and resources of an aged, blind or disabled individual under Medicaid in exactly the same manner as SSI, which is the title of the Social Security Act (Title XVI) 'most appropriately applicable' to an aged, blind, or disabled individual." McM. Op., at 1279-1280 (Pet. App. 40a); see Ross Op., 619 F.2d, at 1272-74 (20a-26a).[20/] Thus, the HHS

20/ The difference between the deeming rules authorized by the HHS regulations and those used by Iowa as directed by the district court appears to be twofold. First, Iowa permits deeming without end. Iowa's procedures have no time limits and are applied indefinitely. Second, Iowa's rules would require a different analysis of income during the applicable one-month or six-month period than is employed under the SSI rules.

regulation permits Iowa to employ limited deeming, which is no more, but no less, than that permitted by Congress for SSI.

C. Federal Deeming Regulations For SSI States Are Reasonable.

The crux of the regulation, 42 C.F.R. § 435.723, setting forth Medicaid deeming in Iowa and other SSI states is employment of the SSI deeming rules. It is the controlling factor of the congressionally established link between Medicaid and SSI that mandates the use of these procedures in the SSI states.

Indeed, in explaining the final version of the deeming regulations, the Secretary noted

> "[t]hat the new regulations require states to use Title XVI availability criteria where Medicaid is provided to all supplemental security income recipients, as is already called for in section 1902(a)(10) [42 U.S.C.

§ 1396a(a)(10)(A)] of the Act . . . . [I]f a state covers all individuals eligible for or receiving Title XVI benefits for Medicaid it must apply the Title XVI income and resource eligibility criteria. The states are now specifically required to use the SSI rules on availability of income." 42 Fed.Reg. 2684-85 (1977) (emphasis supplied).

The use of SSI rules stems, as the Secretary recognized, from 42 U.S.C. § 1396a(a)(10)(A) (i.e., the SSI-Medicaid link). The provision states that:

> "A State plan for medical assistance must -- . . . (10) provide -- (A) for making medical assistance available to all individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI . . . or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter . . . ." 42 U.S.C. § 1396a(a)(10)(A).

Under this statute, Congress intended that states provide Medicaid to all "categorically needy" (i.e., those eligible for

or receiving cash assistance).[21/] As recently reiterated by Justice Marshall, "Any state which participates in Medicaid must extend medical benefits to all persons receiving supplemental security income (SSI) benefits . . . . Such persons are known as the 'categorically needy.'" Blum v. Caldwell, 100 S.Ct. 1635, 1636 (Marshall J., in chambers, 1980).

The meaning and import of the SSI-Medicaid link has never been in doubt. Numerous federal courts, including this Court, have acknowledged this link between SSI and Medicaid established in 42 U.S.C. § 1396a(a)(10)(A). See, e.g., Beltran v. Myers, supra, 101 S.Ct., at 1962 n. 3 ("The categorically needy receive Medicaid benefits merely by virtue of their eligibility

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21/ See discussion of "categorically needy" and "medically needy", supra, at 5-9.

for income assistance under the SSI . . . program."); Fabula v. Buck, 598 F.2d 869, 874 n. 13 (4th Cir. 1979) ("[T]he Social Security Act requires that all SSI recipients be included in the state's Medicaid program . . . ."); Friedman v. Berger, 547 F.2d 724, 726 (2d Cir. 1976), cert. denied 430 U.S. 984 (1977) ("Aged, blind, and disabled patients whose personal incomes are low enough to qualify under the SSI program are considered 'categorically needy' and must be included within any state plan, 42 U.S.C. § 1396a(a)(10)(A)."); Manfredi v. Maher, 435 F.Supp. 1106, 1112 (D.Conn. 1977) ("In 35 of the 50 states, . . . Medicaid eligibility is linked directly to the criteria used in determining eligibility for the underlying categorical assistance programs . . . ."); West v. Cole, 390 F.Supp. 91, 98 (N.D.Miss. 1975) ("Congress amended the Medicaid Act at

42 U.S.C. § 1396a(a)(10) to expressly require all states to provide Medicaid assistance to all SSI beneficiaries.")[22/]

Indeed, as this Court pointed out in Gray Panthers, Congress specifically developed the § 209(b) option in order to allow states the opportunity to avoid the SSI-Medicaid link.

> "Congress retained the requirement that all recipients of categorical welfare assistance -- now SSI -- were entitled to Medicaid. Congress feared that these States would withdraw from the cooperative Medicaid program rather than expand their Medicaid coverage in a manner commensurate with the expansion of categorical assistance. '[I]n order not to impose a substantial fiscal burden on these States' or discourgage them from participating, see S.Rep.No. 553, 93d Cong., 1st Sess. 56 (1973), Congress offered what has become known as the '§ 209(b) option.'" 101 S.Ct., at 2637 (footnote omitted).

22/ See also Norman v. St. Clair, supra; Hayes v. Stanton, 512 F.2d 133 (7th Cir. 1975).

Simply stated, 42 U.S.C. § 1396a(a)(10)(A), the SSI-Medicaid link, demands that all categorically needy persons eligible for or receiving SSI also receive Medicaid.[23/] In order for that requirement to be effected when a spouse becomes institutionalized, states such as Iowa, which have voluntarily chosen to use the SSI-Medicaid link, must apply the SSI deeming rules. The Secretary has employed this logic for promulgation of 42 C.F.R.

23/ There is no need for this Court to go beyond consideration of the categorically needy. As previously noted, Iowa has decided not to have a medically needy program. Further, the court of appeals' discussion of the optional categorically needy (the so-called "gap") is likewise irrelevant. The options are by definition, "among the 'categorically needy'". McM. Op., 619 F.2d, at 1284 (Pet.App. 53a). Consequently, their rights to benefits and the rules applicable to them are identical to those of other categorically needy persons. This Court's ruling as to the applicable deeming rules to be applied to the categorically needy will necessarily include all members of the plaintiff class.

§ 435.723.

The SSI deeming rules stem from a number of provisions adopted by Congress in 1972 when it created the SSI program. See 42 U.S.C. §§ 1382(a)(2), (b)(2), 1382c(b), 1382c(f)(1), as added by Pub.L. 92-603, 86 Stat. 1468 (1972).

> "In sum, under the SSI program, deeming is mandated by statute as long as the couple lives together in the same household. If the couple ceases to live together, deeming will cease at the beginning of the month after the month in which they cease to live together if only one spouse is aged, blind or disabled and after six months of separation if both spouses are aged, blind or disabled." McM. Op., 619 F.2d, at 1287 (Pet.App. 61a).

As noted earlier, these rules are identical to the ones adopted by the Secretary in 42 C.F.R. § 435.723 for SSI states like Iowa. "This congruence is not coincidental; it is compelled by the relationship between the SSI and the Medicaid programs." McM.

Op., id., at 1287 (Pet.App. 61a-62a).

The Secretary, then, in defining "availability" in the context of an institutionalized spouse where categorically needy aged, blind, or disabled persons are involved requires use of the same deeming rules as are used in SSI. This choice, although different than the Secretary's choice in § 209(b) states, is reasonable in light of congressionally enacted linkage between SSI and Medicaid voluntarily accepted by Iowa. Without maintaining the SSI deeming rules in § 435.723, an individual could be an SSI recipient but not be eligible for Medicaid. Such a result would be directly contrary to federal law. 42 U.S.C. § 1396a(a)(10)(A).24/

24/ Of course, such a result is a regular occurrence under the Iowa procedures approved by the courts below. For example, if Mrs. Herweg had applied for SSI cash assistance in January, 1977 when she also sought Medicaid benefits,

Only two arguments have been offered which could conceivably support a conclusion, under the Batterton test, that the Secretary's regulation is arbitrary and capricious.[25/] One, based on an

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Footnote 24 continued.

application of the SSI deeming rules would have resulted in her being found eligible for a $25 per month SSI apyment. (This occurs because Mrs. Herweg had been institutionalized for more than one month, and SSI deeming is limited to one month since her spouse is not an SSI "eligible spouse". See McM. Op., 619 F.2d, at 1290-1291 (Pet. App. 69a-72a).) Even though Mrs. Herweg was sufficiently indigent to qualify for receipt of SSI cash benefits, it did not alter Iowa's Medicaid deeming rules. Under those rules, Mrs. Herweg was not automatically eligible for Medicaid and, contrary to the SSI procedures, a significant amount of her husband's income was deemed available to her, despite her indigency.

25/ Since Judge Ross did not analyze the federal regulation under the Batterton standard, plaintiff is forced to consider arguments which might have been pressed using that approach. It is plaintiff's position, of course, that these arguments would not have been sufficient, under Batterton, to support Judge Ross' conclusion.

interpretation of section 1396a(a)(17)(D), suggests that the effect of the Secretary's regulations promulgated under (17)(B) is to nullify paragraph (17)(D). See Ross Op., 619 F.2d, at 1272 (Pet.App. 18a-20a).

This argument, however, is based on a false premise and is contrary to this Court's interpretation of (17)(D) in Gray Panthers. In order to conclude that (D) is nullified, it is necessary to interpret (D) to be mandatory in nature. In other words, only if (D) is seen as requiring spousal deeming in all circumstances does the deeming regulation run contrary to the statutes.

Paragraph (D), however, is not mandatory. It simply permits states to consider the financial responsibility of relatives when the relationship is between spouses or between a parent and a child under 21. See, e.g., Manfredi v. Maher, supra, 435

F.Supp., at 1109. The import of (D), as this Court recognized in Gray Panthers, is that it allows an exception to a policy which otherwise prohibited deeming.

> "It is clear beyond doubt that Congress was wary of imputing the income of others to a Medicaid applicant . . . . Congress treated spouses differently from most other relatives by explicitly authorizing state plans to 'take into account the financial responsibility' of the spouse. 42 U.S.C. § 1396a(a)(17)(D)." Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2642 (footnote ommited).

HHS regulations have not nullified the permissible deeming authorized in (17)(D). On the contrary, consistent with the congressional intent behind (D), the Secretary does permit deeming between spouses in SSI states. The only limitation circumscribed by the regulation is that deeming must be time limited in order to be consistent with Congress' complementary

policy of demanding Medicaid coverage for categorically needy individuals. Rather than act arbitrarily, the Secretary has carefully balanced two congressional directives, as (17)(B) requires, allowing both policies their proper impact.[26/]

The second argument which might be offered to justify a ruling that the HHS

26/ Similarly, it has been suggested that the federal regulations fail because they allow Iowa to enforce spousal responsibility only through its support laws. See Ross Op., 619 F.2d, at 1272 (Pet.App. 18a-19a). However, the HHS regulations do not prohibit all deeming, nor do they leave Iowa's use of spousal responsibility laws as its only recourse. Under the regulations, an SSI state may "enforce spousal financial responsibility through its Medicaid regulations to the extent permissible under the SSI statute", and in addition, enforce greater "financial responsibility . . . through the state's relative responsibility laws." McM. Op., 619 F.2d, at 1280 (Pet.App. 42a) (emphasis in original). Again, this result is consistent with the meaning of (17)(D) and not contrary to congressional intent, as the Secretary has consistently recognized. See 42 Fed.Reg. 2685-2686 (1977).

regulation is improper is that the Secretary has used terminology allegedly contrary to the intent of the "availability" language in (17)(B). Specifically, the criticism focuses on the Secretary's use of the words "actually contributed" rather than "actually available." See Ross Op., 619 F.2d, at 1271-74 (Pet.App. 17a-24a). But this concentration on semantics is a false issue.

The "actually contributed" language has no special significance. It clarifies the intent and meaning of the regulation, but it is not crucial to its effect. The key question is whether any deeming greater than that permitted under SSI will be allowed in SSI states like Iowa. As long as the SSI-Medicaid link is carried forth by adoption of the SSI deeming rules for categorically needy recipients, then the use of a particular word by the Secretary

is irrelevant. The controlling factor which mandates the current regulations and thereby voids Iowa's rules is the relationship between SSI and Medicaid. The use of the word "contributed" is not determinative.[27/]

27/ In addition, it was argued below that the federal regulation fails because it permits, during some periods, unlimited deeming. This is required, however, because SSI allows similar deeming; it must be emphasized, though, that such broad deeming is specifically time limited. Iowa's rules, on the other hand, continue the deeming process indefinitely. The Secretary's decision to choose the time limited SSI approach is consistent with the Secretary's need to develop simple and sound administrative policies.

> "The administration of public assistance based on use of a formula is not inherently arbitrary. Cf. Weinberger v. Salfi, 422 U.S. 749, 781, 782 784, 95 S.Ct. 2457, 2475, 2476, 45 L.Ed.2d 522 (1975) . . . To require individual determinations of need would mandate costly factfinding procedures that would dissipate resources that could have been spent on the needy." Schweiker v. Gray Panthers, supra, 101 S.Ct., at 2642.

Given the strict dictates of the Batterton test, the Secretary's regulations permitting limited deeming under the SSI rules in SSI states like Iowa are fair and reasonable. The regulations define the term "available" as directed by Congress, 42 U.S.C. § 1396a(a)(17)(B), so that it is consistent with the authorization to employ spousal responsibility in (17)(D) as well as with the SSI-Medicaid link, 42 U.S.C. § 1396a(a)(10)(A). Since these regulations are to be given, under Batterton and Gray Panthers, "legislative effect", Iowa's rules, to the extent that they require contrary results, are invalid.

CONCLUSION

The decision of the court of appeals should be reversed.

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